

LEGAL REPRESENTATIVES OF CAPTAIN LOUIS MARNAY.

[To accompany Bill H. R. No. 250.]

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MARCH 2, 1860.

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Mr. FERRY, from the Committee on Revolutionary Claims, made the following

REPORT.

*The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Captain Louis Marnay, report:*

That this claim was favorably reported on the 29th day of May, 1858; that report, with the evidence, has been re-examined, and your committee, concurring entirely with that report, adopt it, and report a bill in all respects the same as the one then reported.

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IN THE HOUSE OF REPRESENTATIVES, May 29, 1858.

Mr. DAWES, from the Committee on Revolutionary Claims, made the following report:

*The Committee on Revolutionary Claims, to whom was referred the petition of Ezra T. Marnay, one of the heirs-at-law of Captain Louis Marnay, of the revolutionary army, having had the same under consideration, report:*

That on the 19th of February, 1858, adverse report of the Court of Claims No. 105 was taken up from House calendar in Committee of the Whole House, and the report concurred in without discussion. The report was not read, nor its contents stated. Had it been, the incongruities and inconsistencies would have been observed, and the case arrested. It appears from the printed documents of the House containing the report of the Court of Claims, that Ezra T. Marnay, as administrator of Louis Marnay, had preferred his petition to the Court of Claims, in which he, as one of the children of Louis Marnay, was interested in a claim which the said Louis Marnay had against the

United States for services as a during-war's man in Colonel Hazen's regiment, and entitled to the gratuity of eighty dollars as a private, under the resolution of Congress of May 15, 1778. Then followed a communication from the Pension office, certifying to the enlistment of said Marnay in Hazen's regiment, on the 16th of November, 1776, and his being returned as a sergeant, and entitled to the gratuity of \$80, and as having received bounty land in the year 1790. Then followed the claimant's points and brief, in the case of a private (or sergeant.) Next followed the opinion of the court, delivered by Chief Justice Gilchrist. In the petition, the court says, the claimants state that Louis Marnay was a captain in the revolutionary army, and served to the end of the war, or until he was reduced or retired, and claimed under resolutions of Congress of October 21, 1780, March 22, 1783, March 8, 1785; and that the half-pay or commutation provided for in either of said resolves had never been paid, but remained due.

The first question (the court say) in this case is, whether the claimant is not barred by the resolutions and statutes of limitations, referring to the resolutions of November 2, 1785, July 23, 1787, act of March 27, 1792, and February 12, 1793. They then state, it is not alleged or proved that this claim was presented at the treasury before the 1st day of May, 1794, and, as we decided in the case of Chamberlin *vs.* The United States, the claim is now barred by the statute of limitation. "It is therefore unnecessary to examine the question whether Louis Marnay was a captain in the army, as alleged in the petition."

"It is also alleged that there was an error in the settlement with Louis Marnay made on the 25th of January, 1786, because he is therein credited with \$12 per month for fifty-nine months' service; whereas he should have been credited with \$40 per month for such service, being the pay of a captain. But this claim is barred by the act of February 12, 1793, above cited. It is not a balance entered in the books of the Register of the Treasury which would be saved by the proviso in that act, for no balance appears to his credit on the books."

It appears by the petition that no such claim as stated in the opinion was made, and that there was a material error in attaching the opinion of the court in No. 105 to a case undisposed of in said court, (No. 571.) It also appears that since the case was disposed of by the House, the documents have been printed, and the errors corrected, bearing the same number (105) of adverse report from the Court of Claims; but the same is off the calendar, and is now presented to your committee, on petition referred to them, to replace it on the calendar, or that such action be had thereon as shall seem just and proper in the premises, with a prayer that the acts of limitation be disregarded, and that the claim might be decided on the merits.

Your committee, believing this to be a proper case for their consideration, have examined it carefully, and report the following facts: Louis Marnay is shown by the records of the Treasury Department to have been a captain in the revolutionary war, from January, 1777, to November, 1781. One Mouty testifies that he himself served in Hazen's regiment of Canadians in the revolutionary war, and for his services in said war was and is a pensioner of the United States. He states

that he was well acquainted with Louis Marnay, who was a captain in the same regiment in which he served, for about four years, or until the reform of the army took place, about 1781. He does not state any further knowledge of him until after the termination of the war; then he settled in an adjoining town, where he continued to live, in Champlain, in the State of New York, until he died, about fifty years ago. That he was also acquainted with Louis Marnay, the son of Captain Marnay, who was a soldier in the same regiment, who had been dead some years.

It is claimed, secondly, that there was an error made in the settlement of the account of Captain Marnay, who is shown by the books to have been settled with, from the treasury records, in January, 1786, from ledger D. He is credited with fifty-nine months' service, from January, 1777, to November, 1781, and charged by pay of the army, \$12 per month, \$708. The pay of a captain was forty dollars per month for the infantry, at the close of the war, in 1783.—(See old Journals of Congress.)

It is claimed, thirdly, that Captain Marnay was entitled to three hundred acres of land, promised by resolution of Congress, September 16, 1776, and October 3, 1780.—(See Journals of Congress, vol. 3, p. 533, 1780.)

It appears by reference to the journals of the old Congress that a reduction of the army was resolved upon from October 3, 1780, to take effect the first of January, 1781; but that the regiment commanded by Colonel Hazen was continued on the establishment, and that regard should be had to the many deserving officers who, by the foregoing arrangement, must become supernumerary; whereupon Congress passed the following resolution:

*“Resolved, That from the time the reform of the army takes place they be entitled to half-pay for seven years, in specie, or other current money equivalent; and also grants of land at the close of the war, agreeably to the resolution of the 16th of September, 1776.”*

There is no evidence when Captain Marnay left the service; but there is strong presumption he continued to serve until the regiment was disbanded, which did not occur until the end of the war. Whether he served during the war, or became a supernumerary, in either event your committee are clear that he would come within the resolution of March 8, 1785.

The resolutions upon which this claim is founded are as follows:

*Resolution of October 21, 1780.*

*Resolved, That the officers who shall continue in the service to the end of the war shall also be entitled to half-pay during life, to commence from the time of their reduction.*

*Resolution in Congress, March 22, 1783.*

*Resolved, That such officers as are now in service, and shall continue therein to the end of the war, shall be entitled to receive the amount of five years' full pay in money or securities, on interest at*

six per cent. per annum, as Congress shall find most convenient, instead of the half-pay promised for life by the resolution of the 21st day of October, 1780. \* \* \*

*Resolution in Congress, March 8, 1785.*

*Resolved*, That the officers who retired under the resolve of 31st of December, 1781, are equally entitled to the half-pay or commutation with those officers who retired under the resolves of the 3d and 21st October, 1780.

The committee are not satisfied that the second and third claims should be allowed, and therefore report adversely upon them; but, for the reasons before stated, believe the claimant to be entitled to the half-pay for life, viz: to December, 1802, the time said Marnay died, and report the accompanying bill.